To-day and to-morrow, partly cloudy; southwest winds.

NEW-YORK, THURSDAY, JULY 18, 1907, -TWELVE PAGES,-by The Tribune Association

RECOUNT FIGHT IN MIX.

TWO ADVERSE RULINGS.

Appellate Division, 1st Dept., Opposes Same Court of 2d Dept.

The Appellate Division of the First Department The Appellate Division of the Second Departent in Brooklyn decided on Tuesday by a vote to two that the act was constitutional.

nanimously declaring the belief Manhattan court announced that the ould have to go to the Court of Appeals

J. Shearn, counsel for William R.

friends of Mayor McClellan were greatly pellate bench of the First Department. The Mayor at the City Hall when he heard the news

no change in the intention of the and his friends to continue to oppose the bureau of elections after being deposited in the nighttime. This is only one of the nts raised by the Mayor and his friends

Justice Dayton, all other justices of the Suprem-Court not sitting in the Appellate Division and viding for a recount of the 1985 vote,

lute decision in the matter would no that decision. He said also that the court was ready to hear suggestions and opinions of real present in court. In the mean time, ever, he said that it had been decided to t a stay in the proceeding in the First Dement, pending the action of the Court of

that it was tantamount to the granting of a writ bition, and alleging that there was grave bt of the competence of the court to issue h a writ when there was another remedy. ene Lamb Richards, appearing for the ayor, personally, contended that the court was impetent to issue such a writ in the circum-

the other department.

supporting Mr. Richards. The court d that it was uncertain as to its power was the stay was granted, but the writ was Mr. Shearn, in a long argument, pleaded that

locked by a stay. Aside from the dou the power of the court to grant such a stay, said Mr. Shearn, there is every reason to hasten the recount of the votes. He expressed his regret at the failure of the court to agree with the opinion of the Appellate Division in Brooklyn, which had, he said, given two weeks of care ful consideration to the matter, and added that the whole recount could be accomplished in the whole recount could be accomplished in sixty days. As a point, he added that the courts being in recess the rooms of the courthouse could be used for the recount, whereas, if the stay were granted, nothing could be done until November, when the courts would be in session and crowded with other business.

URGES PUBLIC OPINION IN ARGUMENT. Mr. Shearn said that questions of public policy, connected with the opinions of many persons that there had been an injustice to his client in the 1905 election, demanded that there be no delay in the recount. While this, he said, could not affect the questions of law involved, be felt that it might properly affect the court in the exercise of discretionary power. He con-tended that public opinion had already had con-siderable effect upon all branches of the state government, in inducing the action culminating in the passage and signature of the recount

The refusal of Attorney General Mayer, said Mr. Shearn, to sanction que warranto proceed-ings had resulted in the election of a new Attorney General and a new Governor, thus making Mr. Mayer responsible for the election of Governor Hughes and Mr. Jackson. Mr. Shearn did not explain to the court how these effects were produced, contenting himself with the simple statement of "fact."

The counsel drew denials from the bench when he remarked that the stay would be a practical veto by the court upon the recount measure. Then he turned to the question of expense, saying that the expense of the recount would be, relatively, very small. He asserted, in reply to a question by Justice Houghton, that the proceedings would require no stenographers, and that the expense would practically be limited to the \$10 a day fees of the commissioners appointed by the Supreme Court to count the ballots. He could see no possible need for stenographers to take down objections unless there was deliberate delay, and believed that speedy reference to the court would check such tactics. Then he said: "But suppose it did cost \$20,000, or even \$50,000, that is not to be con-sidered." sidered beside the public interest."

Justice Houghton was still unconvinced, and pointed out that many references cost \$50,000 or more. Then Mr. Shearn said that the surety company that provided Mr. Hearst's unlimited bond for the costs of the proceeding had charged the premium on a \$25,000 bond only, after care-

ful investigation.

Going back to the question of the right of the court to issue a stay, Mr. Shearn cited the case of Wyatt, in which it was decided that a writ of prohibition could not be issued if there was another remedy. In this case, he held, the remedy lay in a motion by Mr. Richards or Mr. Pendleton, in the Supreme Court, to vacate the order (made mandatory under the law) for a received the protein were denied an In case this motion ,were denied an

appeal could and should be taken. DOES NOT PROVIDE REMEDY

This, said Mr. Richards, did not, in fact, provide a remedy. The Supreme Court would not take into account the constitutionality of the law on a motion to vacate its order, and the

decision of the Appellate Division in Brooklyn

LEFT CLOUDS BY ROPE.

Aeronaut Makes Perilous Drop of 200 Feet from Defective Balloon.

A hot air balloon ascension at Sulzer's Harlem River Park, with the aeronaut sliding down his trail rope to safety, gave the employes of a Harlem wholesale butcher some excitement yes terday. The employes were holding a picnic at the park with the usual accompaniments of

'Professor" M. Padnaut was scheduled to perform a dangerous daredevil, death delying parachute jump at 3 o'clock. For some 6 o'clock. The balloon rose only a few hundred feet and then drifted over the Harlem River and hung stationary over the Willis Avenue

chute jump, but the trail rope hung only twenty feet above the building housing the engir

FAULTY BLAST FATAL.

Pennsylvania Terminal Explosion Kills One and Hurts Several.

the Pennsylvania Railroad terminal station, at Ninth avenue and 32d street, killed one man and njured several others yesterday afternoon. Every effort was made by the contractors to nour later that the police learned of the acci-

men who were most severely injured, Salvatore Genopi, of No. 412 West 36th street, and Leonardo Bondolina, of Mott street, near Hester, were taken to Roosevelt Hospital and will re-

The accident happened while the men were at ie rock toppled over on them. It was nearly around the excavation it was necessary to sum-mon the reserves of two precincts to keep order.

The Rev. Father Kinney, of St. Michael's Ro nan Catholic Church, was one of the first to

Shortly afterward Joseph Eagan, of No. 455 West 42d street, was injured by a blast in another part of the excavation and was taken to the hospital. He will recover.

BOOKMAKERS HIT HARD.

Betting Agent Fails to Make Good His "Markers" for \$24,000.

The bookmakers at Brighton Beach had another velching case on their hands yesterday. Tony

were much worse even than he feared. It him in a peculiar position, as unless he ould continue in business as a clubbouse co

The case follows so closely the one at Sheepshead The case rollows so closely the blief at sheepshad. Bay, when a commissioner, betting in the name of Dr Carlos F. McDonald, disappeared, leaving unpuld markers to the extent of some \$50,500, that the layers talked yesterday of making some hard and fast rule to protect themselves

SEATS FALL; BAND PLAYS.

Many Injured, but Panic Averted at Circus in Cleveland.

Cleveland, July 17 .- A section of seats gave way at a show in the circus grounds on Scranton avenue this afternoon, throwing one hundred people to the ground. The section which fell comprised fourteen tiers. No one was killed but twenty persons sustained injuries of a more or less serious nature. Miss Kittle Boyle, who suffered a broken leg, and Mrs. Hyle, injured internally, are among those seriously hurt. A panic was averted by the band, which

SHOT RECREANT LOVER.

tention from that quarter.

Cleveland Girl's Revenge for Being Left "Waiting at the Church."

Cleveland, July 17.-Marietta Dennoro, eighteen years old, shot and instantly killed Raffaelo Darbato, nineteen years old, in a Cleveland street to-day. They were to have been married on July 3, according to the story of the girl, but Darbato failed to come to time. To-day Darbato went to her home. She met him and shot without warning.

after being arrested.

BLACK HAND MEN CAUGHT Arrested Near Buffalo as They Secure Decoy Package.

[By Telegraph to The Tribune.]
Buffalo, July 17.—Members of a Black Hand
gang on June 16 made a demand on the Buffalo Pitts Company for \$10,000 and threatened that unless it was quickly forthcoming, they would blow up the company's building, one of the largest manufacturing establishments in the city. No attention was paid to the threats until another letter, dated July 6, was received. In this communication the time limit was eight days. The money was to be placed under a days. The money was to be the constant of the stone in a cemetery at Fort Eric, across the river in Canada. Police Superintendent Reagan detailed two detectives to Fort Eric yesterday. it being the last day of grace. A package was placed under a stone and when darkness fell two men stole quietly to the place and took it out. Detectives pounced on them and brought them to Buffalo, where they described them-selves as Frank Guarino, a saloon keeper, and Liborlo de Varco. Both were armed. After a preliminary examination to-day they were remanded for a further hearing.

TRAVEL MADE COMFORTABLE IN HOT

The "Royal Limited" leaving New York 3:50 P. M. for Washington via Royal Blue Line, is equipped with electric fans and lights.—Advt.

AFTER MUTUAL RESERVE. HEROES ON THE GEORGIA.

of Insurance Company.

surance Department's staff of life insurance exam-

total of \$77,154,836 insurance in force

JOHNSON WILL NOT RUN.

Not Be a Candidate.

(By Telegraph to The Tribune.)
Minneapolis, July 17.—According to John Durkes,
a leading Democrat of the Red River Valley, who ecently arrived here from North Dakota, Govrecently arrived here from North Dakota, Gevernor Johnson has stated in most positive language that he is not and will not be a candidate for the Democratic nerolination for the Presidency. "I am not and will " be a candidate." Governor Johnson is quoted as "ying, "and while I am appreciative of the many pleasant things that have been said of me by the press, my head is not swelled. The people of Minnesota have been very kind to me, and I appreciate their kindness from the bottom of my heart."

WANTED TO MARRY SPEAKER CANNON

Mrs. Badamer Also Desired to Have White House Cleaned for Their Occupancy.

[By Telegraph to The Tribune] Rochester, July 17.—Mrs. Christiana Badamer, of No. 267 North street, was brought here this morning from Washington by John A. Cisco, of the District of Columbia Board of Charities. played throughout the accident and diverted at- She went to Washington under the delusion that she was going to marry Speaker Cannon. She had saved money a long time for the journey and told the White House guards that she wanted to go right in and clean up the house, so

that "she and 'Joe' could begin housekeeping."

Mrs. Badamer's daughter went to Washington and induced her mother to return by telling her that "Tricle Joe" was about to make a Northern trip soon, and would visit her at her home here. Mrs. Badamer's delusion dates back to the murder of President McKinley, over which she be came greatly excited. She prepared several times to go to Washington to protect Mr. Roosevelt. Mrs. Badamer is sixty years old.

TRIED TO SEE THE PRESIDENT.

"I was right and feel no sorrow," she said Man with Fancied Grievance Against Sheehan Chased Away from Oyster Bay.

Oyster Bay, July 17.—A young man, who seemed reasonable and agreeable in everything except that he fancled he had a grievance against William F. Sheehan and that President Roosevelt could remind the control of the could be seen as the control of the could remind the control of the could remind the country be seen as the could remind the country of the could remind the country of sheeran and that Present Robsvet Coda Fem-edy it, came to town to-day. He told about his fancled wrongs in the village, and then started for Sagamore Hill afoot, but Secret Service men escorted him to the station and put him on an out-going train. He said his name was S. C. Metcalf and his home was in Buffalo.

CLOUDBURST CAUSED THREE DEATHS. Great Damage Reported by Storms in West

Virginia and Ohio.

Zanesville, Ohio, July 17 .- A cloudburst and electrical storm to-day resulted in three deaths and much property damage. Taylor Cook was drowned while fording a creek at Museville, and a man was drowned in the Adams Mills basin. His boat was upset by the wind. John Klinc, a miner, of Conelisville, was killed by lightning at South Zanes-

Pittsburg, July 17.—Delayed telephonic commu-nication with West Virginia points late to-night indicates enormous damage by storms in the interior the state.

COSTA RICAN RAILWAY LOAN VOTED. San José, Costa Rica, July 17.—Congress has approved the bill for a loan to G. D. Cook & Co. of \$2,000,000 for the completion of the Facilic Railway. The matter will be taken up in detail at the present extraordinary session of Congress.

Remember all through rail tickets between N. Y. and Albany are accepted on Day Line steamers.

SUPT. KELSEY ACTS. DIED TO SAVE OTHERS.

Institutes Exhaustive Investigation Captain McCrea Tells the Story of Disaster on Battleship.

Boston July 17-On board the Georgia it

"I was on the bridge," said Captain McCrea making the run for the practice. I was takwere beating the records of the other ships of

"I heard the shout 'Fire!' but there was no shot, and then I saw the men running aft, and quickly the fire hose that is always laid out in circles last night. It also caused some readiness when there is firing going on was

boatswein and Midshipman Gravescroft led the

powder was when it flashed. He was laid down

That's what kills. The external burns were hideous enough, but to breathe that stuff is

INSTANCES OF HEROISM.

owing up. It would be very to have a story like that go out, because I cannot find that there is any foundation for it, or need for a man to make any attempt to do anything of the sort. But if the President wants heroism let him look up this brave man who stood by his gun to save the rest.

"Since we went back to the target grounds the men have been shooting better than before the accident. We haven't finished practice, and we are going back to the targets and break the

CONDITION OF THE INJURED.

Four of the twelve survivors of the explosion are in an extremely critical condition in the United States Naval Hospital at Chelsea. Th ondition of Louis O. Meese, a seaman, who enlisted at Berea, Ohio, was so dangerous that the physicians said that they believed death would result in less than twenty-four hours. Mid-shipman James F. Cruse, of Omaha, has shown a slight improvement since vesterday, and the condition of James P. Thomas, of Brooklyn, is reported as unchanged. The body of William F. Pair was sent to his home in Brooklyn today, and that of Seaman Edmund J. Walsh to Lynn. One body remains at the hospital.

CAUSE NOT YET FOUND.

Naval Board Investigates the Georgia Disaster.

Boston, July 17 .- The naval board of inquiry appointed by Rear Admiral Charles H. Thomas, commanding the second division of the Atlantic fleet, to endeavor to ascertain the cause of the explosion on the Georgia, visited the naval hospital at Chelsea to-day to take the deposition of the injured men. The board is composed of Captain Scaton Schroeder of the battleship Virginia, Captain W. W. Kimball of the battleship New Jersey, Lieutenant Commander Mark L. Bristow, chief ordnance officer of the fleet, and Lieutenant Kenneth G. Castleman, attached to the Virginia.

The board began its investigation on board the Georgia, carefully inspecting the turret in which the explosion occurred and taking the evidence of officers and men who were familiar with the conditions about the turret at the time of the explosion and witnesses of the affair.

The Georgia steamed up the harbor this afternoon and the board of inquiry transferred its investigation to the naval hospital at Chel-sea. Owing to the critical condition of the in-jured men in the hospital, four of whom it was feared might not survive the night, the surgeons in charge of the hospital would permit the board to examine only three of the injured men. The men who were examined were Charles Hansell, gunner's mate, of New York; Charles L. Eich, ordinary seaman, of Frankfort, Ind., and Samuel L. Rosenberger, ordinary seaman, of Philadelphia. The nature of the questions and answers was not given out, the inquiry

The work at the hospital consumed about two hours, and the board then returned to the It is understood that the investigation of the

board is practically complete, and that to-mor-row the findings will be transcribed and for-Continued on second page. DEWEY'S CLARETS AND OLD BURGUNDY Taken with your meals enrich the blood, H. T. Dewey & Sons Co., 138 Fulton St., New York

CAID MACLEAN ESCAPES.

Sir Harry, Aided by Moors, Flees to Moroccan Sanctuary.

Tangier, July 17 - Aided by factions of the n escaping from the hands of the handit Raisuli. He has taken refuge in the inviolable Zaoula Youstida

It is suggested that Raisuli connived in the scape of the Caid as the best way out of a difficult situation.

TARIFF TO BE LET ALONE.

Until After Election, Says Senator Hopkins at Oyster Bay.

[By Telekraph to The Tribune.]
Oyster Pay, July 17.—The tariff will be let lone until after the Presidential election. This nothing but the most patent selfish consider statement was made by Senator Hopkins, of Illinois, to-day immediately after he left Sagamore Hill, where he had a conference with the

"It would be suicidal to the Republican party. he Senator added, "to undertake a revision of the tariff during the next Congress. After the f the Republican party to revise the tariff, and

Mr. Hopkins said he believed such an argunent would appeal to and be accepted by Re-

ADMIRAL MACLEAR DEAD.

nake the best race of all the men the Republi-

Retired British Naval Officer Expires Suddenly at Niagara.

dropped dead on the veranda of the Clifton Hotel to-day. The admiral was staying at the hotel with his wife and his niece. Death was caused by heart failure, induced by excessive

eat.
Admiral Maclear's wife and niece were by his die when he dropped dead, and the porch was lied with guests who were viewing the falls. The ody will be sent to England.

Maclear, late astronomer royal, of Cape of Good

was born.

Entering the naval service as a cadet on the laster in 1851, young Maclear served as a midshipman in the Baltic and Black seas, and as a licument saw active service on board the Sphinx in he China war from 1860 to 1862, and was executive efficer of the Octavia during the Abyssinian cam-

paign.

He commanded the Challenger on her famous scientific voyage from 1872 to 1876, was promoted to full captain in 1878 and to rear admiral in 1891. He was retired in the same year. His home was at Beaconscroft, Cluddingfold, Surrey. He devoted much attention to meteorology and natural history and had published a "Compilation of Hydrographic Sailing Directions."

COLLEGE MEN MISSING.

Bowdoin Students May Have Drowned on Maine Coast.

Brunswick, Me., July 17 .- The coast in the cicinity of the mouth of the Kennebec River is being searched for some trace of two prominent Bowdoin College juniors, who it is feared have lost their lives while yachting. They are Richard A. Lee, son of Professor Leslie A. Lee, of Bowdoin, and John Franklin Morrison, a son of B. F. Morrison, of Medford, Mass. Both are about twenty-one years old. Lee is vice-presiabout twenty-one years oid. Lee is vice-president of the New England Athletic Association, secretary of the Maine Intercollegiate Athletic Association, and manager of Bowdoin's track team. Morrison is manager of the Bowdoin

tennis team and secretary of the Maine Inter-collegiate Tennis Association. The young men left Mere Point a week ago yesterday in a sloop for a cruise to Chastmas Cove, and must have been near Seguin during the bad squall that afternoon. Neither knew

much about boating. TRIAL OF FORMER DOUMA MEMBERS.

One Hundred and Sixty-nine Signers of Viborg Manifesto Arraigned.

St. Petersburg, July 17.-The trial opened here to-day, before the Court of Appeals, of one hun-dred and sixty-nine members of the first Douma-who drew up the Viborg manifesto.

ELECTRIC CHAIR FOR JERSEY DOGS. Plainfield, N. J., July 17 (Special).—Plainfield may dopt the electric chair, or, more properly, the elec-

ric kennel, for doing away with stray dogs caught by the city poundkeeper. Mayor Charles J. Fisk has promised Dr. T. S. Davis, of the Society for the Prevention of Cruelty to Animals, that he will personally investigate the matter, and if electricity is found to be a more humane method of killing Plainfield's stray curs he will recommend its

adoption.

Stray city dogs are now taken to the Rushmore dynamo works, where they are asphyxiated in a large gas tank. Reports have been received by the society that this method is cruel and an investiga-

while Dr. Davis was at the works six dogs were placed in the gas tank and the physician timed the death dealing process. At the expiration of twenty minutes the tank was opened and one of the dogs was found to be alive, while there was some doubt as to whether life was extinct in the other five. MANY DESERTIONS FROM BATTLESHIP.

Norfolk, Va., July 17.—One hundred desert have been listed and advertised from the battles Minnesota, one of the warships in Hampton Roads, in the last few weeks. Week end or Just over Sunday: Albany, Troy, Lake George, Saratoga—Unrivalled Peoples or Citi-zens Hudson River Night Line—renewed vigor; business Monday.—Advt.

Changes Suggested-Message. Albany, July 17.-Weary of repeated failures

PRICE THREE CENTS.

"PUT UP" TO ASSEMBLY

SENATE HAS COMPROMISE.

Will Adopt Half of Apportionment

of the Apportionment committees of the two adopt half the changes suggested by the Ass ly, and if necessary will embody them in a aucus measure. Having made these nise by the Assembly. This will leave an appear ate is apparently a trick of pretending to make he Assembly proposal and rejecting everything

features of which will be accomplished on Monday night, the Senate will hasten to finish its

TWO MEETINGS WITHOUT RESULT.

which was adjourned to permit the men iours of discussion reached no agreement and

Hinman reintroduced the Tully bill precisely as it Assembly and Chairman Parsons of the New York County Republican Committee, who is skiling with Speaker Wadsworth, introduced a bill containing the changes demanded by the Assem-bly. This bill differed from the Tully bill in

ompkins, Chemung, Tioga and Schuyler,... ayuga, Seneca and Cortland To these will be added the Br gomery-Schoharie, with 136,383 population; the smallest, Steuben-Livingston, with 115,581. Their difference will be 11,802 less than the dif-

ference in the pure Assembly plan.

WON'T REMEDY SPEAKER'S GRIEVANCES. Of course the Senate leaders who expect to adopt this compromise plan at their caucus on Monday night recognize that it will not remedy Speaker Wadsworth's personal grievances in the least. While the Senate will concede half of what the Assembly asks, and so can be under to accusation of failure to compromise, its con-Speaker deems himself vitally concerned. Nevrtheless the Senators fail to see how, logically, the will be able to furnish sound objections to the adoption of the compromise which meets the Assembly half way and creates such equal dis-

Senator Raines declared after the Senate's session to-day that there would be a caucus of the Republicans on Monday night on the Tully

nd the Assembly plans. "Under the districts as laid out in the Senate plan there is less variation in population by some 11,000 in the seventeen counties in the vestern part of the state than in the Assembly plan," he said. "It is true that the Assembly plan creates districts where the difference is less n the six districts in the middle part of the

"Will you agree to the Livingston-Wayne-

"Will you agree to the Livingson wayned Ontario district?" was asked.
"I cannot answer for the Senate." replied the majority leader. "I shall be guided entirely by the judgment of the Senate. I will not accept anything which the Senate will not accept."
"In turn will the Senate accept anything which you will not accept?" he was asked. He smiled broadly, but answered nothing.

THE GOVERNOR'S MESSAGE.

Earlier in the day Governor Hughes sent to the Legislature a special message urging action on several subjects. Those of chief interest were an amendment to the New York Otty charter permitting the Controller to seil at private sale bonds unsold after public bidding and an-other providing for an Aldermanic reappor-tionment. The message follows: State of New York.

Executive Cha

Albany, N. Y., July 17, 1907. To the Legislature.
I recommend the following subjects for your con-

1. Amendment of the greater New York charter so as to provide that whenever the Controller of the city has been unable to sell at public sale any portion of the bonds and corporate stock duly offered, such portion may be sold by him at private sale for not less than their par value. On account of the recent failure of an offer of corporate stock the Controller is urgent that such amendment be procured and expresses confidence in his ability to dispose of 4 per cent corporate stock at private sale at not less than par. The Board of Estimate and Apportionment has adopted a resolution favoring the amendment. It has been urged upon me that unless this relief is secured it will be necessary for the authorities to fix a higher rate of interest, and that this will be seriously prejudicial to the interests of the city.

Opinion seems to be divided as to the wisdom of the proposed amendment, many fearing that it will open the door to collusion. In other important jurisdictions, however, public securities may be sold at private sale. And there are two important checks in the requirements that the bonds shall not be sold for less than their par value and must first be duly offered at public sale. The responsibility of conferring power is with the Legislature. The responsibility of conferring power is with the Legislature. The responsibility of tis due exercise is with the municipal authorities. In view of existing financial conditions and the importance of the matter to the city of New York I am constrained to submit it to your careful consideration.

2. Amendment of the greater New York charter. 1. Amendment of the greater New York charter

AFTER ALL, USHER'S THE SCOTCH made the highball famous.-Advt.